

Freedom of Information/EIR Refusal (PIT)

Centre City Tower, 7 Hill Street, Birmingham B5 4UA
21 Bloomsbury Street, London WC1B 3HF

By email

2nd August 2019

Environmental Information Regulations –Request For Information-
Refusal Notice (Public Interest Test)

Reference: **EIR201906095**

Dear [REDACTED]

Thank you for your request for information received by Ofwat on 25th June:

1. 'I would like to know what information Ofwat has on recorded waste water spillages in the past 5 years, which have been the cause of Southern Water's failure to contain the waste water.
2. I would like recorded dates and full reports on the scale of the event. I'm a Southern Water customer who uses a river for sailing and Kayaking which is situated near a Southern Water treatment plant and deserve to know if any have been in my area.
3. I would also like to see all reports which Ofwat have either conducted or have ordered to be carried out by third parties regarding the health risks of wastewater spills.'

We have understood your request relates to information we hold as a result of our investigation into Southern Water, details of which were published on our website on 25 June 2019.

We have been working with the Environment Agency and Southern Water to identify if there is any information that we hold that falls within the scope of items 1 and 2 of your request and which can be released without negatively impacting ongoing investigations being conducted by ourselves and the Environment Agency. We do not hold information which falls within the scope of item 3 above and this is therefore refused as an exception under Regulation 12(4)(a).

Although Ofwat has found that Southern Water breached its general duty as a sewerage company, our investigation did not do an in-depth site by site review of all Southern Water's wastewater treatment works. We looked at a small number of sites to get a sense of wider systemic problems and our investigation then focused more on Southern Water's failures of governance and control. As the environmental regulator, it is the Environment Agency that has jurisdiction over end of pipe compliance and its ongoing investigation is looking at the environmental and health aspects arising out of Southern Water's failures.

The Environment Agency is a repository for spillage and pollution incident data. They are likely to hold information about the specific river and treatment works you are enquiring into and may, subject to similar reporting restrictions due to their investigation, be able to provide information relating to specific sites. Their FOI request process is available [here](#).

It is also important to understand that some wastewater spillages and pollution events may not have been recorded due to the manipulation of the sampling regime, and therefore some of the information you have requested may not be held by any parties. There is currently a criminal investigation being conducted by the Environment Agency. We understand the investigation is complex and is likely to take some time to complete.

I can confirm that some of the information you requested is held by Ofwat and that this is being withheld under the Environmental Information Regulations 2004 (EIR). It is considered that the public interest in withholding the information, at this stage, outweighs the public interest in disclosing it and that therefore the information is exempt from release.

The exception applied is Regulation 12 (5) (b) of the EIR – 'course of justice and inquiries exception.'

Regulation 12(5)(b) provides an exception from the disclosure of environmental information which would adversely affect :

- the course of justice;
- the ability of a person to receive a fair trial; and
- the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

The exception applies because there are a number of ongoing investigations into the incidents set out in Ofwat's penalty notice including by the Environment Agency. Please see this [notice](#) for more information.

Having received representations from both the Environment Agency and Southern Water, we have concluded that the release of information would adversely affect all three of the elements above in the following ways:

- The Environment Agency's investigations are wide-ranging and ongoing and as it has not yet disclosed full details of its investigations to the defendants, the early release of information will impact the conduct of those investigations.
- The release of information will impact public opinion which would mean the company were unable to receive a fair trial.
- The release of information would prevent the EA from investigating objectively due to private interests at particular sites.
- The release of information would impact on Ofwat's ability to conduct investigations in the future and to complete this one.

We consider that the rights of the public to be made aware of pollution incidents is very important and this has weighed heavily on the side of releasing the information in the public interest test we have conducted. However, on balance we have decided to withhold the information, at this point in time, for the reasons set out above.

The public interest test found that release now would prejudice the defendants' right to a fair trial and would prejudice the work of the investigation in understanding the true scope and impact of the incidents.

The Crown Prosecution Service on its website quotes from a Government White Paper in relation to information requests which states: "It is in the interests of both the individuals concerned and the integrity of the prosecution process that material relating to both live and contemplated prosecutions and to prosecutions which do not go ahead can be kept confidential".

Ultimately there is an overwhelming public interest in ensuring that the justice system and that court and regulatory procedures around access to information are upheld. If you wish to discuss any of the above please contact me, quoting the relevant reference number.

Once an FOI request is answered, it is considered to be in the public domain. To promote transparency, Ofwat may publish the response and any material released on our website in the [FOI disclosure section](#). Any personal information in the letter will be removed before publishing. We will hold the information in accordance with Ofwat's [retention and disposal schedule](#) which can be found in our Publication Scheme on our website.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of the decision, please contact

FOI@ofwat.gov.uk or write to:

Programme and Project Management Office

Ofwat

Centre City Tower

7 Hill Street

Birmingham B5 4UA

If you are not happy with the outcome of that review you can ask the Information Commissioner's Office to consider your complaint. Generally, the ICO will not make a decision unless you have exhausted Ofwat's complaints procedure. The ICO can be contacted at <https://ico.org.uk/> or

The Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Yours sincerely,

A solid black rectangular box used to redact a signature.